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Relicensing Process Officially Begins

The Catawba-Wataree relicensing process officially began on February 7th when Duke Energy filed the First Stage Consultation Document (FSCD) with the Federal Energy Regulatory Commission (FERC). The FSCD describes the projects involved, environmental resources, and gives an introduction into the relicensing process for the 13 hydroelectric stations on 11 Catawba River reservoirs. Duke currently operates these dams under its original 1958 license.

The first phase of this process included formal publicly noticed consultation meetings between state and federal resource agencies, Native American Tribes, the public and the licensee.

CWRC participated in all the public meetings and then held two Study Requests Workgroup Conferences to help pinpoint the issues and file our own study requests. That was done and filed with the Duke Relicensing Team and the FERC on May 30. A copy of the study requests can be found on the CWRC web site.

Duke has committed to a relicensing process that features collaborative stakeholder involvement. They have formed North and South Carolina State Relicensing Teams (SRTs) with membership based on key relicensing representatives from state and federal resource agencies, Duke Power,

(See Relicensing—Page 4)

Duke Names Relicensing Facilitator

Duke has announced the selection of Washington, DC based Kearns & West as the facilitation service to administer the operations of the State Relicensing Teams (SRTs) and the regional Advisory Groups (AGs) throughout the relicensing process. They bring a very strong team to the process, led by North Carolina native Ken Kearns. Mr. Kearns received his BS in nuclear engineering from NC State University.

Kearns & West has a long track record in facilitating complex multi-party negotiations on energy and environmental topics including facilitating hydro licensing processes at a

national level and for a number of hydro projects across the country. They were selected as the sole source to facilitate the Federal Energy Regulatory Commission's (FERC) final drafting workshop and breakout sessions for the 2003 rulemaking to update the relicensing rules.

The role of the facilitator is to make sure the SRTs and AGs are consistent with the project objectives. The facilitator will also solicit and assess stakeholder issues and questions, generate consensus buy-in to results, and produce documents resulting in

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Carolina Partners
is the newsletter of the
Catawba-Wataree
Relicensing Coalition

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A Letter from Our 2003 President

Dear Friends:

In our last issue I wrote that the time was coming for our Workgroups (Aquatic Resources, Water Quality, Recreation and Cultural Resources, Land Use/Planning and Terrestrial Resources) to do the hard work of analyzing issues and preparing study requests. When Duke Energy issued its First Stage Consultation Document (FSCD) in February, that time came up quickly. The study requests that will help determine the studies to be performed over the next 2-3 years were due May 31.

CWRC consulted with our experts, Richard Roos Collins and Fred Ayer, and with their input and advice organized two Workgroup conferences - April 7 and May 2. During those conferences we consolidated the issues identified over the past 4 years, along with those gleaned from the eight public meetings held by Duke, and developed clear requests stating the need, connection to the project, public interest, and available sources of information and in some cases proposed methodology. The result was a 40 page document filed with Duke and with the FERC that will serve

as the basis for our negotiations in obtaining study plans to provide the necessary data for improving the Catawba-Wateree's resources.

In addition to CWRC's document, various agencies, local governments, NGOs and other groups benefited from the workshops in preparing their own study requests. In all, 30 people representing 27 entities, plus members of the Federal Energy Regulatory Commission (FERC) and the Duke team participated in the workshops. In the next weeks, representatives from the public, local, state and federal agencies and CWRC will begin negotiations with Duke to determine the actual study plan.

Other news items included in this newsletter are FERC's progress on its new relicensing rules, Duke's announcement of its choice of process and the structure for public participation, and the beginning of a series of workshops funded by the Mott Foundation and run by the Natural Resource Leadership Institute. The next months hold plenty of activity for players in this relicensing.

As we enter summer, public awareness of the value of our river system will be heightened. This is prime time for all of us to keep talking to our friends and elected officials about the importance of making the most of the opportunity we are presented with. Counties and municipalities should make sure their land use and recreation plans are known to Duke and the FERC, and citizens should encourage them to prepare such plans if they don't yet exist.

This fall we plan to host a conference with state officials from other states who will share their experiences using their authority under Section 401, the Water Quality Certification process - in relicensings in their regions. We will keep you posted. Enjoy the summer - and our Catawba-Wateree River. ♦

Study Requests
*serve as the basis for negotiations in obtaining study plans to provide the necessary data for **improving** the Catawba-Wateree's resources.*



Vicki Taylor
2003 Board President

♦ **About CWRC**

Board of Directors: The board of CWRC includes 15 seats divided evenly among the three geographical sub-basin regions: upper, middle, and lower. CWRC's current board members:

Upper — Judy Francis, Burke County, NC / Squeak Smith, Trout Unlimited / Mike Struve, Western Piedmont Council of Governments

Middle — Donna Lisenby, Catawba Riverkeeper / Kirk Otey, Trout Unlimited / Vicki Taylor, Lake Norman Covekeeper

Lower — Will Close, Springs Foundation / Craig Davis, Wateree Home Owners Association / Gerrit Jöbsis, SC Coastal Conservation League / Parker Whedon, Real Running River Protective Society

Officers for 2003: President—Vicki Taylor / **Vice-president**—Mike Struve / **Treasurer**—Kirk Otey / **Secretary**—Craig Davis

Mission Statement: The mission of the CWRC is to facilitate a process to protect, enhance and restore the natural, cultural, recreational and economic resources of the Catawba-Wateree River basin.

CWRC Hires Hydro Attorney

Early in 2000, members of CWRC's Board met with Fred Ayer, a hydroelectric and relicensing consultant out of Portland, Maine to talk to him about Duke Energy's relicensing of the 13 hydro dams on the Catawba-Wataree. Mr. Ayer had been involved with hydroelectric projects and FERC relicensing for over twenty-five years and was the first consultant CWRC employed to help guide the coalition through the early stages of the relicensing efforts on the Catawba.

Now, we have to say goodbye to Fred as he leaves the consulting business to start his new job as Executive Director of the Low Impact Hydropower Institute (LIHI). After having worked on over 75 hydro regulatory projects as both a consultant and employee of licensees, Fred's extensive knowledge of the hydropower industry will help move LIHI's certification program to a national level.

LIHI is the only public program to certify hydropower projects that exceed regulatory requirements for protection of environmental quality. The certification provides market benefits to the project owners in states where electricity consumers may choose their electricity suppliers or products.

In our continued effort to have the best the relicensing experience available, CWRC has hired attorney Richard Roos Collins of the Natural Heritage Institute (NHI) as a consultant during the study requests and issues phase of the relicensing. "Having someone of Richard's experience and stature in the world of natural resource negotiations and FERC relicensing is a tremendous asset for our coalition," said Vicki Taylor, CWRC Board President.

NHI is a non-governmental, non-profit organization founded in 1989 by a group of experienced conservation lawyers and scientists. This group foresaw the need for a tool kit for the next era of environmental problem solving.

As a public interest law firm, NHI has more scientists, economists, and planners than lawyers and focuses its business on finding solutions to environmental problems.

Roos Collins is well known in the hydro relicensing arena. An experienced trial attorney, he has worked with the Federal Energy Regulatory Commission (FERC) extensively and represents both public agencies and non-profit organizations in policy, negotiation, and litigation involving natural resources and energy, with emphasis on restoration of environmental quality consistent with economic growth.

A founding member of the Hydropower Reform Coalition, Roos Collins has negotiated with utilities regarding possible reforms in the administration of the Federal Power Act. He is also a founding member and Chairman of the Board of Directors of the Low Impact Hydropower Institute and helped found and administer the first ever program to certify hydropower projects that exceed regulatory requirements for protection of environmental quality.

Roos Collins has served as attorney adviser in the Office of General Counsel, U.S. Environmental Protection Agency for development of regulations governing smog, acid rain, and waste incineration. He was the Deputy Attorney General for the Public Rights Division of the California Department of Justice where he prosecuted cases of improper management and disposal of hazardous wastes. He served as Vice-Chairman of the Water Resources Subcommittee of the American Bar Association.

Mr. Roos Collins received a BA with high honors from Princeton University and his Juris Doctor degree with honors from the Harvard School of Law. ♦

*"Having someone of Richard's
experience and stature
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—Vicki Taylor*

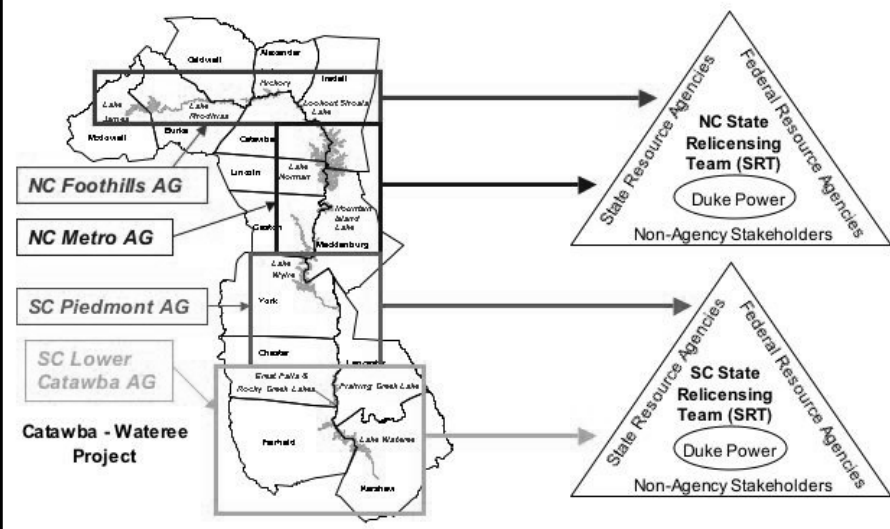


Richard Roos Collins
and former CWRC Executive
Director Jim Tolliver (shown on
the right) discuss relicensing is-
sues.



Fred Ayer
FERC relicensing veteran of
over twenty years.

Catawba-Wateree Relicensing Process



(Relicensing—Continued from Page 1)

and Non-Government Organizations (NGOs). The SRTs will be advised by regional Advisory Groups (AGs) from North and South Carolina. There will be two AGs in each of the states and will consist of a defined number of members that equitably represent local issues and interests to the SRTs. AG team members will be decided on in August.

Shown at left is a breakout of how the SRT and AG teams will be formed within the two states. Board President Vicki Taylor will be the CWRC NC SRT representative. The SC SRT representative will be board member and SC Coastal Conservation League employee Gerrit J. Jöbsis. Mr. Jöbsis is Director of the Carolina Rivers Project.

FERC Update

In August 2002, the Federal Energy Regulatory Commission (FERC) announced its intention to undertake a rulemaking to review and potentially rewrite the hydroelectric licensing process. After traveling to six cities across the country to discuss its proposed rule change and solicit input, a draft rule was issued on February 20, 2003, followed by a 60-day comment period. FERC staff will review the comments submitted by the April 21st deadline.

The Integrated Licensing Process (ILP) would become the primary licensing process, with the existing Alternative Licensing Process (ALP) and the Traditional Licensing Process (TLP) remaining as options for applicants in certain situations.

The major benefits of the proposed rule are:

- increased assistance by Commission staff to the potential applicant and stakeholders during the development of a license application;
- greater coordination among the Commission and federal and state agencies with mandatory conditioning authority;
- the Commission's environmental scoping process to be carried out in conjunction with the applicant's pre-filing consultation;
- increased public participation in the pre-filing consultation process;
- establishing schedules and deadlines for all participants, including Commission staff;
- development of a Commission approved study plan by the applicant, with informal resolution to study disagreements, followed by mandatory, binding study dispute resolution, if necessary; and
- elimination of the need for post-application study requests.

The ILP would become the relicensing default process and would fix most of the major kinks in the relicensing process. The proposed draft rule also makes changes to the TLP by requiring public consultation, among other things.

The Commission expects to issue a final rule in July.

CWRC is excited about the prospects of this relicensing as we collaborate together to protect the health of Catawba-Wateree River Basin. ♦

(Facilitator—Continued from Page 1)

comprehensive or partial stakeholder agreement(s) that can be filed as a part of the application for the new license in August 2006.

Duke received seven proposals from facilitator services across the country. Key state agencies, NGOs and stakeholders throughout the Catawba-Wateree River Basin were invited to evaluate the initial request for proposal (RFP) and the proposals that were received from the RFP invitation. Upon final assessment, the Duke Power Hydro Licensing Team met and compiled a short list of three bidders to interview. That list included successful bidder Kearns & West, Gomez and Sullivan from New Hampshire, and the North Carolina based Natural Resource Institute at NCSU who is in partnership with the Lee Institute, Interactive Decisions, and USC.

In announcing the selection of Kearns & West, Duke Power Relicensing Project Manager Mark Oakley stated that they had chosen a team that is experienced, unbiased and nationally recognized as one of the very best in the hydro industry in delivering relicensing agreement for complex projects. ♦

First NRLI Workshop Held

On May 27 and 28, the Natural Resource Leadership Institute (NRLI), delivered our first facilitated session with Duke Energy, state and federal agencies and stakeholders representing different interests in the basin. CWRC board members in attendance were Vicki Taylor, Donna Lisenby and Mike Struve. FERC staff member Ron McKittrick also attended and offered advisory support and valuable perspective based on his experience. The session was held at a wooded retreat in South Carolina appropriately named Tree Tops.

The purpose of the session was to build relationships, identify key concepts for successful negotiations, and outline the next steps. NRLI facilitators Steve Smutko and Mary Lou Addor, assisted by Ann Udall of the Lee Institute led lively and informative discussions among participants. They highlighted the importance of meeting needs in three areas:

- Substantive - which concerns the quality of decisions made;
- Psychological - meeting the needs of individuals; and
- Procedural - ensuring the process is fair.

On the substantive side we worked at filling empty slots for the Advisory Groups (AGs) and State Relicensing Teams (SRTs) designated in Duke's model process. The absence of Crescent Resources was noted and a request was made to encourage them to be represented in this process.

We also began identifying the elements for a charter or protocol to guide our activities over the next years. Suggested elements included:

- Scope/process/outcomes
- Decision process
- Consequences for violating the charter
- Ground rules
- Information flow
- Allowing/requiring teams to do their "job"
- Member expectations
- Meetings
- Media
- Public input
- Available resources to team
- Roles and responsibilities

Duke agreed to provide a "straw" document to serve as a basis for future discussion. We all agreed that it was important that certain minimum requirements be included in each Advisory Group charter, but that each group also needed to have room to create charters that reflected their specific needs and perspectives.

The session, which was funded by the Mott Foundation, is the first of several they have funded for NRLI to provide for us. Additional sessions will focus on relicensing education and negotiation skills. Each session should help enhance the capacities of stakeholders to work toward an eventual consensus agreement for a new hydropower license on the Catawba-Wateree River Basin. ♦

CWRC Funding Report

We are pleased to announce that for 2003 CWRC has received funding from the **Charles Stewart Mott Foundation, Z. Smith Reynolds Foundation, American Rivers,** and the **Kershaw Wateree Homeowners Association (WHOA).** CWRC gratefully acknowledges the support of these foundations, associations and the many individuals, including CWRC board members, who have generously supported us with their time and money. We have two additional multi-year grants pending and look forward to hearing soon that they have been granted.

CWRC board members, consultants, staff and volunteers are working hard to ensure communities in our river basin are well represented so that desired conservation results will be achieved during the relicensing process. Your support **DOES** make a difference. We depend on contributions from individuals and businesses to continue to fulfill our mission. Donations to CWRC will help us to facilitate a relicensing process that protects, enhances and restores the natural, cultural, recreational and economic resources of the Catawba-Wateree River Basin.

CWRC gives the Catawba-Wateree relicensing effort an effective and independent voice. Partnering with us ensures that the diverse interests in the river basin are well represented during negotiations for a new hydropower license. Your ongoing support will help ensure a strong collaborative effort for the next three years. Your tax deductible contribution helps promote and protect our river's resources.

Please join us in this effort by contacting Beverly Reeves Childs at 704.295.4400 or email director@cwrc.info. If you would like to make a donation to CWRC please make checks payable to:

Catawba~Wateree Relicensing Coalition
926 Elizabeth Avenue, Suite 301
Charlotte, NC 28204

The Great Falls Flow!

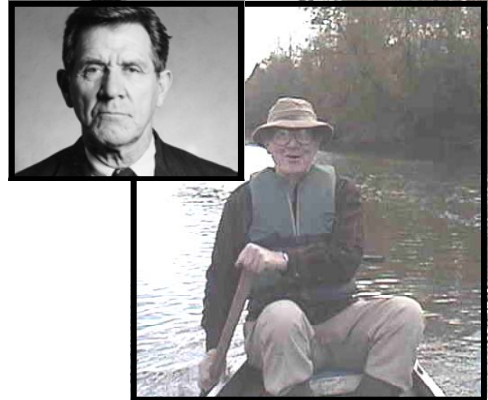
Semi-retired lawyer, longtime environmentalist and active Catawba-Wateree stakeholder Parker Whedon would love to see the Great Falls of the Catawba restored to its former glory. Now blocked by a diversion dam and the Great Falls reservoir, many stakeholders long for a day when the Great Falls will flow again as it once did before the dam was constructed.

Parker is president of the Real Running River Protection Society and a board member of the CWRC. He spends much of his time hunting, fishing, and working to protect his beloved Catawba River. Parker and other stakeholders and environmentalist objected when Duke Power applied to the Federal Energy Regulatory Commission (FERC) in late 2002 to amend its license for the Catawba-Wateree project; hoping to modify the project boundary to exclude two bypass reaches where the natural water flow of the riverbed is diverted to generate power. One of those bypassed reaches of the riverbed was diverted almost 100 years ago to generate power, and was a series of high rapids called the Great Falls of the Catawba.

Several motions were filed by state and federal agencies and conservation groups to intervene, protesting Duke’s assertion that the bypass reach is not part of the project works. These agencies also challenged the logic of amending the license months before the relicensing was to begin.

In April, FERC agreed with the agencies and dismissed Duke’s application to amend their license to remove the Great Falls of the Catawba from the Catawba-Wateree relicensing project boundary. This was a victory for Parker and for the many other stakeholders along the Catawba River Basin.

Recently, heavy rains sent water over the top of the diversion dam. Parker and his kayaking friends were on the river as rushes of water flowed down into the GREAT FALLS once again! ♦



Parker Whedon

CWRC Board Member is shown canoeing near the Great Falls of the Catawba.

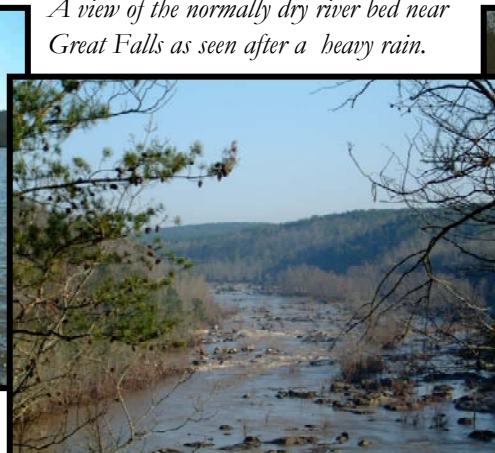
“A river is more than an amenity, it is a treasure. It offers a necessity of life that must be rationed among those who have power over it.”

—Oliver Wendell Holmes

CWRC has information that a video release is in the works of the Great Falls. We will keep you informed.



*Great Falls Divergence Dam
...on an average day.*



A view of the normally dry river bed near Great Falls as seen after a heavy rain.



*Great Falls Divergence Dam
...after a heavy rain.*

CWRC Coalition Partner

This is the second feature in a series that will focus on one or two CWRC Partners per issue thus giving our readers a better understanding of the diversity of opinions we incorporate in our mission.



Trout Unlimited (TU) is North America's largest conservation organization specifically dedicated to coldwater resource issues. TU's mission is to conserve, protect and restore North America's trout and salmon fisheries and their watersheds. With 125,000 members in over 450 active chapters, and an annual budget in excess of \$15,000,000, our national staff in DC, field staff throughout the country, and grassroots members all work steadfastly toward accomplishing our mission.

For over a decade, TU has been actively involved in numerous FERC relicensing processes throughout the country. Working collaboratively with a myriad of stakeholders during the relicensing process, TU has helped initiate and implement numerous inventive mitigation measures designed to enhance coldwater resources. Our National staff has provided expert advice and guidance during these proceedings, and local TU members have donated untold hours insuring rivers impacted by hydro-projects complied with mandated directives.

Locally, North Carolina, South Carolina and Tennessee TU members have been active participants in FERC relicensings during the past several years. NC TU was an initial partner in the creation of the Catawba-Wateree Relicensing Coalition (CWRC), with dual representation on the Board of Directors and Executive Committee. Kirk Otey serves as Treasurer of the CWRC and is Chairman of TU's National Resource Board. Squeak Smith serves on the CWRC Board, and is Vice President of

TU's Southeast Region which includes NC, SC, TN, GA, FL, MS, AL, and LA.

Future hydro-management effects on recreational opportunities, water quality, quantity, and flow are of great importance to TU and will be determined during relicensing. TU's interest in the Catawba-Wateree relicensing is most specifically related to the upper 17 miles of free flowing river below Lake James. This section represents the only coldwater resource within the watershed.

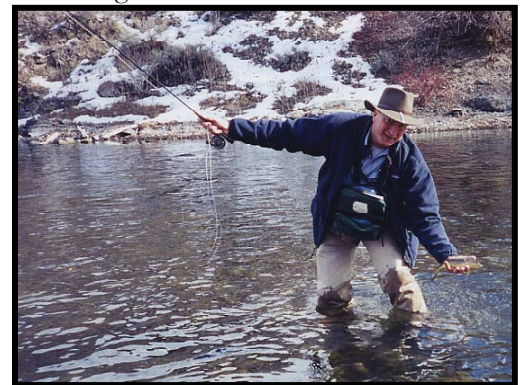
TU has been at work for nearly a decade with Duke Power and the NC Wildlife Resources Commission, trying to establish a coldwater fishery in the upper Catawba River. Toward that end, the Muddy Creek Watershed Restoration Initiative (MCWRI) was formed in 1998. It is a highly successful partnership between local landowners, Duke Power, TU, NCWRC and other state agencies and organizations in an effort to reduce sediment entering the Catawba River below Lake James. Sediment reduction will enhance water quality; improve coldwater habitat and the potential for establishing a trophy brown trout fishery in the upper free flowing section of the Catawba River.

Our goal is long-term coldwater resource enhancement for future generations. TU looks forward to active CWRC stakeholder participation and cooperation with Duke Power throughout the FERC relicensing process. ♣



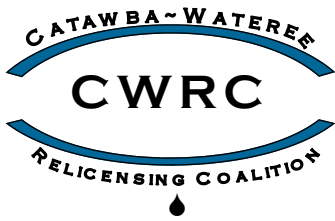
Squeak Smith

*CWRC Board Member
Vice President of TU's
Southeast Region*



Kirk Otey

*CWRC Treasurer
Chairman of TU's National Resource Board*



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Support CWRC.

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Please mail your contributions to:

CATAWBA~WATEREE RELICENSING COALITION
926 ELIZABETH AVENUE, SUITE 301
CHARLOTTE, NORTH CAROLINA 29204

If you know of someone who would be interested in receiving our newsletter, *Carolina Partners*, let us know. Send their name, address and email address to our office at the address shown above. You may also call or email Beverly Reeves Childs at CWRC with the information.

PHONE: 704.295.4400 EMAIL: director@cwrc.info

The Catawba~WaterEE Relicensing Coalition is a 501(c)(3) non-profit organization. Members of the Coalition are working hard to ensure the desired conservation results will be achieved during the Duke Energy relicensing process of the 13 hydro-electric facilities in the Catawba~WaterEE basin that expire in 2008.

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